

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	Case No. 1999-CR-40099-JPG
)	
KEVIN LEE ANDERSON,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

GILBERT, District Judge:

This matter comes before the Court on Anderson's pro se motion to modify his prison sentence, which he based on the recent United States Supreme Court decision of *Blakely v. Washington*, 124 S. Ct. 2531 (2004). The Court notes that such relief is only available by motion made under 28 U.S.C. §2255; so Anderson's motion is essentially a mislabeled §2255. And per *Castro v. United States*, 124 S. Ct. 786 (2003), courts aren't permitted to construe mislabeled §2255s as §2255s without affording the defendant a chance to either withdraw the motion or amend it to assert all the §2255 claims he believes that he has. For what it's worth, the Court doesn't encourage Anderson to file a §2255 in this case in any event. For one thing, that section limits the time for filing a §2255 motion to one year after the date on which the judgment of conviction in this case became final; no other exception to the limitation period seems to apply here. On that note, *United States v. McReynolds*, 397 F.3d 479 (7th Cir. 2005), found the rule of *United States v. Booker*, 125 S. Ct. 738 (2005), not retroactively applicable to cases final on direct review before January 12, 2005, a category into which this case seemingly falls.

Therefore, Anderson's 18 U.S.C. §3582 motion to modify sentence (Doc. 68) is **DISMISSED**. Anderson's motion to appoint counsel for this claim (Doc. 67) is **DENIED**. The **CLERK OF COURT** is **DIRECTED** to mail Anderson a §2255 form which he should file should he still wish to pursue this claim.

IT IS SO ORDERED.

Dated: May 2, 2005.

/s/ J. Phil Gilbert
J. PHIL GILBERT
U.S. District Judge